

**ORIGINAL**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

Civil Action: 03-CV-0288 A

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Robert R. Smith, Cynthia A. Smith,  
New York State Tax Commission, Bank of Akron, Niagara Frontier  
Transportation Authority, The Buffalo News, a division of  
Berkshire Hathaway, Inc., People of the State of New York,  
Liberty Communications, Inc., New York State Department of  
Taxation & Finance, Niagara Mohawk Power Corp., Erie County  
Department of Social Services, FCC National Bank First Bank of  
Chicago, Root Car Mart Inc., Sears, Roebuck & Company, Empire  
Portfolios, Inc., Ford Motor Credit Company, Midland Credit  
Management, Inc., JESSICA SMITH

Defendants.

U.S. MARSHAL'S REPORT OF SALE

STATE OF NEW YORK)  
COUNTY OF ERIE) SS:  
CITY OF BUFFALO)

TO THE HONORABLE: THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

I, Peter A. Lawrence, United States Marshal for the Western  
District of New York, designated by the Judgment of Foreclosure  
and Sale of this Court filed on 1/29/2004 and entered in the  
office of the Clerk of this Court on 1/29/2004, to make the sale  
of the mortgaged lands and premises therein particularly  
described and directed to be sold, do respectfully report under  
oath as follows:

FIRST: I caused due notice of the sale of the lands and

premises by me at public auction on **3/23/2004**, at the County Courthouse, to be given and published according to law and the rules of practice of this Court, as more fully appears by the Certificate of Service by Mail of Kris Morone showing the due service by mail of a true copy of said Notice of Sale upon the defendants and/or attorneys for the defendants entitled to such notice, attached hereto, and as further appears by the return of posting of a Deputy United States Marshal showing the due posting of true copies of the said Notice of Sale in three conspicuous public places in Erie, where the mortgaged premises are located, attached hereto; and as still further appears by the Affidavit of Publication from ``The Buffalo Law Journal'', a newspaper of general circulation in Erie, where the mortgages premises are located, showing due publication of said Notice of Sale once weekly for four consecutive weeks prior to the date of the sale, attached hereto.

SECOND: That at the time and place for which the said sale was noticed, a Deputy United States Marshal attended in person and, agreeably to such notice, offered the said mortgaged lands and premises for sale to the highest bidder, upon the terms of sale hereto attached and publicly read by me previous to the bidding, and that the said mortgaged lands and premises were then and there struck off by him to Ronald R. Miller and Mary Ann Miller for the sum of \$51,000.00 that being the highest sum bid therefore.

THIRD: That I have credited to the plaintiff on account of the purchase price, as aforesaid, expenses of sale incurred by the plaintiff, as follows:

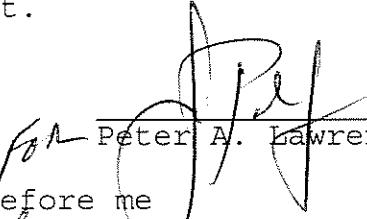
United States Marshal's fees on sale	\$100.00
United States Marshal's fee for Posting Notice of Sale	\$113.25
Fee for Publication of Notice of Sale	\$419.60

And I have further allowed to the Plaintiff on account of such sale the sum of \$820.50, for costs as directed by said judgment of foreclosure and sale, and also the sum of \$107,025.88 and interest for the sum due on the bond and mortgage upon which this action was brought, and directed to be paid to the plaintiff by said judgment.

FOURTH: After the disposal of the purchase money, as above reported, the amount of residue of the mortgage debt (deficiency) remaining unsatisfied arising upon the sale is the sum of \$60,718.84, with interest thereon from the date of this report.

FIFTH: Attached is a statement showing the several items aforesaid and the mode of computation of such deficiency.

SIXTH: That I have made, executed and delivered to Ronald R. Miller and Mary Ann Miller, a good and sufficient deed of conveyance of the mortgaged premises, containing the description set forth in said judgment.

*for*   
Peter A. Lawrence, U.S. Marshal

Subscribed and sworn to before me  
this 7th day of April, 2004

Joanne M. Pontrello  
Notary Public

JOANNE M. PONTELLO  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires Oct. 7, 2006

**STATEMENT**

Amount due on bond/note and mortgage,  
as per judgment \$107,025.88

Interest on principal amount of \$80,456.44  
at 8.75% from 12/3/2003  
to 1/29/2004 date of Judgment: \$ 1,099.53

Interest on Judgment amount of \$107,025.88  
at 1.20% from 1/29/2004, date of  
Judgment, to 3/23/2004, date of sale \$ 190.08  
  
**\$108,315.49**

Amount of Purchase Money \$51,000.00

**Less Expenses of Sale:**

U.S. Marshal's Fee on Sale	\$100.00
U.S. Marshal's Fee on Posting	\$113.25
Advertising	\$419.60
Plaintiff's costs	\$820.50
Attorney's fee granted in Judgment	\$1,950.00

**Total expenses of sale** \$3,403.35

Sale Price Less Expenses of Sale \$47,596.65

**Deficiency** \$60,718.84

**CERTIFICATE OF SERVICE BY MAIL**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

CV NO. 03-CV-0288 A

-v-

Robert R. Smith, Cynthia A. Smith, ET AL.,

Defendants.

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The undersigned hereby certifies that she is an employee of Forsyth, Howe, O'Dwyer, Kalb & Murphy, PC, attorneys for the plaintiff and is a person of such age and discretion as to be competent to serve papers.

That on **February 17, 2004**, she served a copy of the **Attached Judgment and Notice of Sale, by placing a copy in a post-paid envelope addressed to the persons named below, at the place and address stated below**, which is the last known address, and by depositing said envelope and contents in the United States mail at One Chase Square, Suite 1900, Rochester, NY 14604.

Robert R. Smith  
2421 School Street  
North Collins, NY 14111

Cynthia A. Smith  
2421 School Street  
North Collins, NY 14111,

New York State Tax Commission  
c/o Eliot Spitzer, Attorney General  
Real Property Bureau, The Capitol  
Albany, NY 12224  
Attn: Susan M. Cuff, Paralegal

Bank of Akron  
9470 Clarence Center Road  
Clarence Center, NY 14032

Niagara Frontier Transportation Authority  
c/o Ruth Keating, Senior Counsel  
181 Ellicott Street  
Buffalo, NY 14203

The Buffalo News, a division of Berkshire Hathaway, Inc.  
P.O. Box 100  
One News Plaza  
Buffalo, NY 14240

People of the State of New York  
c/o Eliot Spitzer, Attorney General  
Real Property Bureau, The Capitol  
Albany, NY 12224  
Attn: Susan M. Cuff, Paralegal

Liberty Communications, Inc.  
1524 Kenmore Avenue  
Buffalo, NY 14216

New York State Department of Taxation & Finance  
c/o Eliot Spitzer, Attorney General  
Real Property Bureau, The Capitol  
Albany, NY 12224  
Attn: Susan M. Cuff, Paralegal

Niagara Mohawk Power Corp.  
1404 Main Street  
Buffalo, NY 14202

Erie County Department of Social Services  
c/o Howard B. Frank, Esq.  
95 Franklin Street  
Buffalo, NY 14202

FCC National Bank First Bank of Chicago  
201 North Walnut Street  
Wilmington, DE

Root Car Mart Inc.  
c/o Joseph F. Saeli, Jr. Esq.  
4600 Main Street, Suite 200  
Amherst, NY 14226

Sears, Roebuck & Company  
Eastview Mall  
Victor, NY 14586

Empire Portfolios, Inc.  
485 Underhill Blvd.  
Syosset, NY 11791

Ford Motor Credit Company  
1078 John Muir Blvd.  
Amherst, NY 14202

Midland Credit Management, Inc.  
c/o Upton, Cohen & Slamowitz  
Mary D. Milone, Esquire  
485 Underhill Blvd.  
Syosset, NY 11791

JESSICA SMITH  
2421 School Street  
North Collins, NY 14111



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Kris Morone

REFEREE'S  
NOTICE OF SALE  
IN FORECLOSURE  
2421 School Street  
North Collins, New York

United States District Court,  
Western District of New York —  
United States of America, Plaintiff vs.  
Robert R. Smith, Cynthia A. Smith,  
New York State Tax Commission,  
Bank of Akron, Niagara Frontier  
Transportation Authority, The Buffalo  
News, a division of Berkshire  
Hathaway, Inc., People of the State of  
New York, Liberty Communications,  
Inc., New York State Department of  
Taxation & Finance, Niagara Mohawk  
Power Corp., Erie County Department  
of Social Services, FCC National  
Bank First Bank of Chicago, Root Car  
Mart Inc., Sears, Roebuck &  
Company, Empire Portfolios, Inc.,  
Ford Motor Credit Company, Midland  
Credit Management, Inc., Jessica  
Smith, Defendants.

Civil Action: 03-CV-0288 A

PLEASE TAKE NOTICE that pursuant to a judgment of foreclosure and sale, duly made and entered in the above entitled action on 1/29/2004 and entered in the office of the Clerk of this Court on 1/29/2004, I, Peter A. Lawrence, United States Marshal for the Western District of New York, named in said judgment, designated to make the sale of the mortgaged premises described as 2421 School Street, North Collins, NY 14111, more fully described in said judgment, will sell in one parcel at public auction to the highest bidder on the

23rd DAY OF MARCH, 2004  
at 9:00 a.m. at the Foreclosure  
Alcove of the Erie County Hall, 92  
Franklin Street, Buffalo, New York.

The sale and transfer of said premises will be subject to easements, covenants and restrictions of record; violations, zoning regulations and ordinances of the City, Town or Village and County in which the premises lie, existing leases, tenancies and occupancies; and any state of facts that an accurate instrument survey and inspection of the premises would disclose.

Notice: Successful bidders must have certified funds totaling 10% or more of the bid amount, payable to the "U.S. Marshal's Office".

By: PETER A. LAWRENCE,  
U.S. Marshal

FORSYTH, HOWE LAW FIRM,  
One Chase Sq., Suite 1900,  
Rochester, NY 14604 (585) 325-7515.  
04-0446 feb23,mar1,8,15

## AFFIDAVIT OF PUBLICATION

### Buffalo Law Journal,

472 DELAWARE AVENUE BUFFALO, N.Y. 14202

State of New York  
County of Erie  
City of Buffalo } ss.

Nancy Burgasser

being duly sworn,

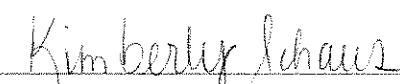
deposes and says, that she is Principal Clerk of Buffalo Law Journal, a newspaper published in said City; that the notice, of which the annexed printed slip taken from said newspaper is a copy, was inserted and published therein ONCE a week for 4 weeks, the first insertion being on the 23rd day of February 2004

and the last insertion being on the 15th day of March 2004

(SIGNED)



Sworn to before me this 15th day of March 2004



Commissioner of Deeds, Buffalo, N.Y.

My commission expires Dec. 31, 2004

U.S. Department of Justice  
United States Marshals Service**PROCESS RECEIPT AND RETURN**See Instructions for "Service of Process by the U.S. Marshal"  
on the reverse of this form.

PLAINTIFF	United States of America	COURT CASE NUMBER	03-CV-288-A
DEFENDANT	Robert R. Smith & Cynthia A. Smith	TYPE OF PROCESS	
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <b>Kritispicuous Places in the County of Erie, NY</b>		
AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) Property: 2421 School Street, North Collins, NY 14411		
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:		Number of process to be served with this Form - 285	1
Kris Morone, Foreclosure Manager FORSYTH, HOWE, DAW FIRM One Chase Square, Suite 1900 Rochester, NY 14604		Number of parties to be served in this case	3 X
		Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

Please post the notice of sale in three places in the County of Erie, NY with at least One Posting in the Town of North Collins.

Fold

Signature of Attorney or other Originator requesting service on behalf of:  Kris Morone	<input checked="" type="checkbox"/> PLAINTIFF	TELEPHONE NUMBER (585) 325-7515	DATE 2/17/2004
<input type="checkbox"/> DEFENDANT			

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No.	District to Serve No.	Signature of Authorized USMS Deputy or Clerk	Date
		55	55	M. H. Kea	02/19/04

I hereby certify and return that  I have personally served,  I have legal evidence of service,  I have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
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Address (complete only if different than shown above)	Date of Service	Time	am
	2/19/04	5:00	pm
Signature of U.S. Marshal or Deputy J. H. Kea			

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
396.00	323.25	—	513.25	—	513.25	—

REMARKS: *Service by Postage*

*① Hamburg PO*  
*② Eden PO*  
*③ North Collins PO*

*RT 62 miles**2.0 Morgan Ave***NOTE**

**PROCESS RECEIPT AND RETURN**

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF	United States of America	COURT CASE NUMBER	03-cv-288 A
DEFENDANT	Robert R. Smith and Cynthia A. Smith	TYPE OF PROCESS	
SERVE → AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <b>Sale in Buffalo, NY</b> ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) <b>Property: 2421 School Street, North Collins, NY 14121</b>		
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:		Number of process to be served with this Form - 285	1
<input type="checkbox"/> Kris Horone Foreclosure Manager FORSYTH, HOWE LAW FIRM One Chase Square, Suite 1900 Rochester, NY 14604		Number of parties to be served in this case	1
		Check for service on U.S.A.	3

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

Please conduct the foreclosure sale on March 24, 2004 at 9:00 a.m.  
 in the Foreclosure Alcove of the Erie County Hall, 92 Franklin Street, Buffalo, NY.

An Agency Rep will attend the sale & announce the bid.

32176.00

Signature of Attorney or other Originator requesting service on behalf of:	<input checked="" type="checkbox"/> PLAINTIFF	TELEPHONE NUMBER	DATE
Kris Horone	<input type="checkbox"/> DEFENDANT	(585) 325-7515	2/17/2004

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin No. 55	District to Serve No. 55	Signature of Authorized USMS Deputy or Clerk <i>M. H. Horone</i>	Date 02/19/04
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I hereby certify and return that  I have personally served,  I have legal evidence of service,  I have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
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Address (complete only if different than shown above)	Date of Service 3/23/04	Time 8:15 am
<i>51,000.00</i>	Signature of U.S. Marshal or Deputy <i>Steve C.</i>	

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS: <i>51,000.00</i>	<i>ROBERT MILLER 2108 HARRISON AVE N. Collins, NY 14121 (716)337-3479</i>	<i>50,000.00</i>	<i>PHILIP TOPHER CORN PO Box 1502 N. Collins, NY 14121 (716)597-7727</i>	<i>NOTE</i>
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**MEMORANDUM OF SALE**  
**(PURCHASE CONTRACT FOR 3RD PARTY SALE)**

RE: USA vs. Robert R. Smith, Cynthia A. Smith

03-CV-0288 A

Mortgaged Premises: 2421 School Street, North Collins, NY 14111

I(We), RONALD & MARY ANN MILLER, have the date of this sale, 3/23/2004, purchased the premises described as 2421 School Street, North Collins, NY 14111, as described in the Notice of Sale in this case, for the sum of \$ 57,000.00, and have paid at this sale, a deposit in the amount of \$ 10,000.00, and hereby promise(s) and agree(s) to comply with all of the terms and conditions of the sale of said premises as mentioned and set forth in the attached Terms of Sale.

**SIGN BELOW: (BUYERS: PLEASE PRINT YOUR FULL NAME(S), INCLUDING THE FULL NAME(S) THAT WILL APPEAR ON THE DEED & TITLE PAPERS:**

Purchaser(s):  
Signature(s)

RONALD R. MILLER MARY ANN MILLER

Purchasers  
Address:

2108 HARRISON AVE.

North Collins, NY  
14111

Telephone:

(716)337-3479

Purchasers  
Attorney:

\_\_\_\_\_  
\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone:

\_\_\_\_\_  
\_\_\_\_\_